

MARK J. BENNETT 2672  
Attorney General of Hawai'i

JAMES E. HALVORSON 5457  
NELSON Y. NABETA 3004  
Deputy Attorneys General  
Department of the Attorney  
General, State of Hawai'i  
235 South Beretania Street, 15<sup>th</sup> Floor  
Honolulu, Hawai'i 96813  
Telephone: (808) 587-2900  
Facsimile: (808) 587-2965  
E-Mail: [Mark.J.Bennett@Hawaii.gov](mailto:Mark.J.Bennett@Hawaii.gov)  
[James.E.Halvorson@Hawaii.gov](mailto:James.E.Halvorson@Hawaii.gov)  
[Nelson.Y.Nabeta@Hawaii.gov](mailto:Nelson.Y.Nabeta@Hawaii.gov)

Attorneys for Defendants  
STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
AND SARAH GRONNA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROBERT SHEREZ,

Plaintiff,

vs.

STATE OF HAWAII DEPARTMENT  
OF EDUCATION; PATRICIA  
HAMAMOTO, Superintendent of  
Hawai'i Schools, MEREDETH  
MAEDA, Principal, Castle High  
School; SARA GRONNER OR  
GRONNA, Vice Principal of Castle  
High School,

Defendants.

CIVIL NO. 04-00390 JMS-KSC

DEFENDANTS MEREDITH  
MAEDA AND SARAH GRONNA'S  
REPLY TO PLAINTIFF'S  
MEMORANDUM IN OPPOSITION  
TO MOTION FOR SUMMARY  
JUDGMENT; CERTIFICATE OF  
SERVICE

Date: February 12, 2007  
Time: 10:00 a.m.  
Judge: J. Michael Seabright

DEFENDANTS MEREDITH MAEDA AND SARAH GRONNA'S  
REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION  
TO MOTION FOR SUMMARY JUDGMENT

I. THE PLAINTIFF DOES NOT OPPOSE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AS TO HIS CONSPIRACY CLAIMS

The Plaintiff's opposition does not contain argument or authority in opposition to the Defendants' motion for summary judgment as to his conspiracy claims.

II. THE PLAINTIFF'S OPPOSITION DOES NOT PRESENT A TRIABLE ISSUE OF FACT CONCERNING WHETHER THERE IS A PRIMA FACIE CASE BASED ON 42 U.S.C. § 1983.

The Plaintiff's § 1983 claim against Defendants Sarah Gronna and Meredith Maeda is premised on the existence of a purportedly "unwritten" policy that prohibited male teachers from serving as tutors for female students, under the Home-Hospital Instructional Services program. Thus, the Plaintiff, believing in the existence of this "unwritten" policy, claims that Defendant Gronna enforced this policy against him. Opposition, p. 6 and Declaration of the Plaintiff, ¶ 19. However, the Plaintiff's opposition fails to present any admissible evidence to establish a triable issue of fact that the policy actually exists.

The declarations of Martin Mattison, Beverly Reidy, and Pauline Kokubun, the educational specialists who supervised the Home-Hospital Instructional Services program in the Windward and Honolulu Districts for the Department of Education all state that the program never had a policy that prohibited the


assignment of a male teacher to serve as a tutor for a female student. Declarations in support of summary judgment: Declaration of Martin Mattson, ¶ 2; Declaration of Beverly Reidy, ¶ 5; Declaration of Pauline Kokubun, ¶ 4. Similarly, Defendants Maeda and Gronna, both employees of the Department of Education, and familiar with this program, confirm that no such policy exists. Declaration of Meredith Maeda in support of summary judgment, ¶ 3; Declaration of Sarah Gronna in support of summary judgment, ¶ 3. Furthermore, it is undisputed that other male teachers in the same program, over the years, have been assigned to serve as tutors for female students. Declaration of Beverly Reidy, in support of State of Hawaii's Reply memorandum, ¶¶ 4-5. The assignment of male teachers to female students could not have occurred if there had actually been the gender discriminatory policy in place as argued by the Plaintiff. Finally, it is also undisputed that the only entity authorized to create this purported policy is the Board of Education and the board did not establish such a policy. § 302A 633.5, Haw.Rev.Stat.; Declaration of Beverly Reidy, in support of State of Hawaii's Reply memorandum, ¶ 5. Consequently, the Plaintiff's opposition fails to present any admissible evidence to establish a triable issue of fact that the policy actually exists. Absent the existence of the purportedly "unwritten" policy, the Plaintiff's claim for individual liability against Defendants Maeda and Gronna must fail.

But in spite of this, the Plaintiff argues for the existence of the “unwritten” policy and individual liability against Defendant Gronna on the claim that he heard Defendant Gronna say “males cannot teach females.” Declaration of the Plaintiff, ¶ 23. However, this argument is without merit even if Defendant Gronna had made these unlikely statements since a plaintiff may not rely upon statements that are contrary to the statutory authority granted to a school board. Brown v. Caldwell School District No. 132, 898 P.2d 43, 49 (Idaho 1995). Therefore, where statements have been made that are contrary to the statutory grant of authority, a plaintiff does not have the right to justifiably rely upon such remarks. Daniel v. University of Cincinnati, 761 N.E.2d 1168, 1172 (Ohio 2001).

Moreover, even if Defendant Gronna had made these statements, according to the Plaintiff’s opposition, she was merely enforcing an existing official departmental policy. Consequently, as a member of the Department of Education, Defendant Gronna’s compliance of an official policy presumptively lacked a personal discriminatory motivation necessary for individual liability under a § 1983 claim. Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561, 583 n. 16, 104 S.Ct. 2576, 2590 n. 16, 81 L.Ed.2d 483 (1984); Washington v. Davis, 426 U.S. 229, 239-41, 96 S.Ct. 2040, 2047-48, 48 L.Ed.2d 597 (1976). Stones v. Los Angeles Community College District, 796 F.2d 270, 279 (9th Cir. 1986).

Finally, the Plaintiff's opposition fails to present any facts showing a triable issue of fact that Defendant Maeda had personally participated in any activity that deprived the Plaintiff of any rights because of his gender. Absent such personal participation, Defendant Maeda cannot be held individually liable under § 1983. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

DATED: Honolulu, Hawai'i, February 1, 2007.

  
\_\_\_\_\_  
NELSON Y. NABETA  
Deputy Attorney General  
Attorney for Defendants  
STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
AND SARAH GRONNA